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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 REVLON CONSUMER PRODUCTS LLC
4 and ELIZABETH ARDEN, INC.,

5 Plaintiffs,

6 v.

24 CV 6438 (ER)

7 GIVE BACK BEAUTY S.A., *et al.*,

8 Defendants.

Hearing

New York, N.Y.
September 25, 2024
2:30 p.m.

9
10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13
14 APPEARANCES

15 STEPTOE LLP
Attorneys for Plaintiffs
16 BY: ELYSE D. ECHTMAN
GILANA KELLER

17 K&L GATES LLP
Attorneys for Defendants
18 BY: RONIE M. SCHMELZ
19 AVRIL LOVE
20 RYAN Q. KEECH
JOHN J. COTTER
-and-

21 BLANK ROME LLP
22 BY: ANDREW T. HAMBLETON

23 Also Present: David Schwartz
24
25

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(Case called)

MS. ECHTMAN: Elyse Echtman of Steptoe for the plaintiffs. I have with me my colleague, Gilana Keller, who is also at my firm and in-house counsel at Revlon, Revlon's general counsel, David Schwartz. Thank you, your Honor.

MS. SCHMELZ: Good afternoon, your Honor. My name is Ronie Schmelz with K&L Gates. I am joined this afternoon by my colleagues, Ryan Keech and Avril Love, John Cotter, and Andrew Hambleton of the Blank Rome firm.

THE COURT: Good afternoon to you all. This matter is on for a hearing for preliminary injunction brought by plaintiffs Revlon Consumer Products, LLC.

I understand from counsel, I forget which letter it came in on, but that there may be some documents that counsel will be referring to that have been designated attorney eyes only. It appears as though everyone at these two tables are attorneys, although -- I'm forgetting your name

MR. SCHWARTZ: Mr. Schwartz.

THE COURT: Mr. Schwartz. You are an in-house attorney, correct?

MR. SCHWARTZ: Correct.

THE COURT: Under the terms of the agreement, are you allowed to see attorney-eyes-only documents?

MS. ECHTMAN: Your Honor, I believe that our protective order provides for only outside counsel to see

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1 attorneys'-eyes-only documents. I think most of the
2 attorneys'-eyes-only documents that have been submitted on this
3 motion come from the plaintiffs. But if there is something
4 that Ms. Schmelz would like to refer to in her argument, we can
5 ask Mr. Schwartz to step out.

6 We also have Will Cornock here, who is a Revlon
7 executive who submitted a declaration in this matter, and we
8 have our forensic expert, Christopher Racich, in the room.

9 THE COURT: Again, we can do this a couple of ways. I
10 think the easiest way would be for counsel to just speak very
11 generally about documents that have been designated attorneys'
12 eyes only and refer me to what the document is. I believe I
13 have all of the documents that have been submitted by the
14 defendants. I received at least courtesy copies of their
15 opposition papers.

16 Are the folks intending to use the technology in the
17 courtroom to show documents?

18 MS. SCHMELZ: Your Honor, there is a few preliminary
19 matters, so we do have in our presentation decks specific
20 information that has been designated attorneys' eyes only. We
21 will attempt to notify the Court and do ask that anybody who is
22 not outside counsel then be excused. We can deal with that
23 when we get there.

24 The other preliminary matter, your Honor, we have two
25 oral motions for *pro hac vice*, my colleagues who will be making

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1 the argument, Mr. Keech on the preliminary injunction and
2 Ms. Love on the expedited discovery.

3 THE COURT: They will be allowed to make their
4 presentations. I assume that their paperwork is in order.

5 You are in good standing in your respective
6 jurisdictions, so your applications will be granted.

7 MS. SCHMELZ: Thank you, your Honor.

8 THE COURT: I guess we will begin with Ms. Echtman, is
9 it?

10 MS. ECHTMAN: Yes, it is.

11 THE COURT: You can do it a couple of ways. If you
12 want to use the podium, you can use the podium. If you want to
13 stand at the table, you can do that, or you can sit, if you
14 wish, whatever makes you most comfortable, as long as you are
15 close to a microphone and keep your voice up.

16 MS. ECHTMAN: I'm very comfortable standing.

17 I do want to connect to the system because I also have
18 a Power Point presentation, if the Court is so interested. I
19 was going to start with the preliminary injunction motion. But
20 if the Court has questions, I can jump in to answer questions.

21 THE COURT: I do have a couple of preliminary
22 questions.

23 One is, if you could describe for me what the -- I
24 don't even know what to call it -- the chain of supply is or
25 how a perfume gets to market, who the players are between a

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1 factory and the consumers, how it gets to stores.

2 Another question that I have preliminarily is, as I
3 understand it, the Britney Spears perfume line or fragrance
4 line will be transitioning over to defendants, XXXXXXXXXX

5 XX
6 XXXXXXXXXXXXXXXXXXXXXXXX

7 Assuming you hold onto it, what's going to happen on
8 January 1? Will the Britney perfumes smell differently?

9 MS. ECHTMAN: XX
10 XXXXXXXXXXXXXXXX

11 XX
12 XX
13 XX
14 XX
15 XX
16 XX Britney Brands owns
17 the marks. The trademarks, those all belong to that company.

18 XX
19 XX
20 XX
21 XX
22 XX
23 XXXXXXXXXXXXXXXX

24 So these are fragrances that over the course of 20
25 years Revlon developed with its suppliers, and I can only give

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1 you my limited knowledge of how the supply chain works, but
2 there are fragrance houses that have the oils and all secret
3 sauce. They work with the companies that market the fragrances
4 to develop fragrances specifically for them. There are more
5 than, I think, 30 fragrances within the Britney Spears line.
6 Those fragrances get bottled. They go into the distribution
7 chain. They go to distributors and retailers until they make
8 it to the shelves.

9 All of the agreements along the way are confidential
10 and proprietary to Revlon, so Revlon's pricing is its own
11 pricing that it negotiates with its suppliers based on its
12 market power in terms of what it can obtain, and all the way
13 that they do business in the fragrance industry, which I think
14 both sides admit is a very competitive industry, is their own
15 secret sauce, their own confidential way that they go about the
16 commercialization process.

17 As of January 1, 2025, they can sell a Britney Spears
18 fragrance. What they can't do is they can't piggyback and take
19 Revlon's plans, Revlon's marketing plans, their blueprints,
20 their financial data, all of that, they can't have Revlon's
21 pricing with Givaudan, they can't have Revlon's pricing. XXXX

22 XX
23 XX

24 Does that answer your question?

25 THE COURT: Yes.

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1 MS. ECHTMAN: What I am going to do here is, I just
2 need to connect to the Court's system, if you bear with me for
3 a moment.

4 What we need to show is a likelihood of success on the
5 merits, irreparable harm, that the balance of the equities
6 favors injunctive relief, and that the relief is in the public
7 interest.

8 This is an injunction to preserve the status quo. I
9 know the defendants have argued that what we are asking for is
10 a mandatory injunction. While we are asking for some
11 affirmative relief, including the return of Revlon's trade
12 secret documents, this is a motion to restore the status quo to
13 where it was before the defendants took Revlon's trade secret
14 documents.

15 We have to show likelihood of success on the merits.
16 We are primarily moving under the Defend Trade Secrets Act.
17 And a DTSA violation is established if you can show
18 misappropriation of a trade secret related to a product or
19 service used in interstate commerce. I don't think that we
20 have any dispute over that.

21 The defendants do dispute whether we have shown any
22 misappropriation. The evidence very clearly shows that there
23 was misappropriation by the former Revlon employees when they
24 were leaving the company before they went to GBB.

25 THE COURT: I'm sorry. I think they are also

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1 disputing that assuming they took anything, they didn't take
2 any trade secrets.

3 MS. ECHTMAN: Correct. They are disputing that, but
4 they can't dispute that things were taken.

5 Specifically, we know that only acquisition is enough
6 under the Defend Trade Secrets Act. They have also made some
7 arguments that under New York law you need to show use. It's
8 enough to show that something was taken, even if it wasn't
9 used, and we have shown use as well.

10 Let's talk about what we know was taken. We have got
11 Ashley Fass. Ashley Fass worked at Revlon in its fragrance
12 business. Revlon's forensics expert has shown, and Ms. Fast
13 admits, that, on May 8, she attached an external hard drive to
14 her Revlon company laptop, and she not only attached it, she
15 downloaded company folders onto that laptop. We don't have a
16 laptop. We don't have the hard drive. The defendants have the
17 hard drive. Ms. Fass says that, on September 19, she gave it
18 to her lawyers. Neither Ms. Fass nor those lawyers have told
19 us what's on the hard drive, but we do have folder names.

20 So we took one folder name, for example, and that
21 folder name is Revlon/contracts. And Revlon's IT found the
22 same folder with the same name on Revlon's shared servers that
23 are accessed by the fragrance group, and that contains a copy
24 of Revlon's licensing agreement with Juicy Couture. That is a
25 confidential agreement that has confidential royalty and

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1 licensing terms.

2 So we have every reason to believe that, among other
3 things that are on this hard drive, there is a confidential and
4 proprietary, highly valuable licensing agreement between Revlon
5 and Juicy Couture.

6 Not only did Ms. Fass take Revlon file folders with
7 Revlon information in it when she left the company, she also
8 admits in her declaration that after she went to GBB -- and she
9 went to GBB in -- I don't recall the exact date, but by June,
10 she was there actively working -- she plugged that same
11 external hard drive into her GBB computer, and she opened
12 documents. She doesn't disclose what documents she opened.
13 She doesn't say anything about the specific contents of her
14 hard drive. But she does say she attached it to her new work
15 computer and she opened it.

16 Now what we know from Revlon's computer forensics
17 expert, who is here in the room with us, is that when you open
18 something on a laptop, there is a possibility, that even if she
19 didn't affirmatively download or share information or email it,
20 that the laptop itself captured data, which is then on a
21 GBB-owned device which belongs to Revlon.

22 THE COURT: I'm sorry. So that I understand, just the
23 mere fact of opening the hard drive, attaching the hard drive
24 and opening it, is enough for the laptop to then take that
25 information and so it now also exists in the GBB laptop?

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1 MS. ECHTMAN: Yes. The extent to which it may exist,
2 we don't know. For example, what Mr. Racich found when he
3 looked at the departing employees' laptops, they left artifacts
4 behind of the documents they had opened, even though those
5 documents weren't there.

6 I can tell you, when I use my Steptoe laptop and I
7 open something from an external source, it automatically
8 creates a copy in my downloads folder even if I didn't do
9 anything to affirmatively download something. It depends on
10 how the laptop is configured.

11 THE COURT: We don't know that, presumably, or you
12 don't know that.

13 MS. ECHTMAN: At this point, without discovery, which
14 is in our other motion, we don't know.

15 THE COURT: So you don't know whether in fact, as we
16 sit here, the documents that Ms. Fass opened on her GBB
17 computer, or using her GBB computer, are currently on her GBB
18 computer.

19 MS. ECHTMAN: That we don't know, but it's a distinct
20 possibility that it is and that's something that we need to
21 know.

22 Ms. Fass says she stopped using that hard drive when
23 we filed this action on August 26, and then just the day before
24 the defendants' opposition was due to the preliminary
25 injunction motion, she gave it to counsel.

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1 And Ms. Fass and her attorneys are in the best
2 position to know what's on that laptop, but it's very hard for
3 them to say that nothing trade secret has been taken without
4 disclosing the contents of the hard drive. In our meet and
5 confer that we had prior to filing the motion and after filing
6 the motion, we asked for an inventory of the hard drive
7 contents. We have not gotten any of that information. This is
8 what we know specifically that Ms. Fass did.

9 Then we have Vanessa Kidd. Vanessa Kidd was the
10 senior vice-president at Revlon. It's a very high position.
11 She was reporting right up into the C-suite. Ms. Kidd was
12 involved in Revlon's very significant and sensitive
13 negotiations with Britney Brands over an extension to the
14 agreement that was scheduled to expire on December 31, 2024.

15 In the middle of that work she was doing, she started
16 interviewing with Give Back Beauty.

17 So, on March 20, Revlon sends a draft written
18 extension agreement over to the Britney Brands team and,
19 according to Ms. Kidd's declaration the next day, she had an
20 interview with the head of Give Back Beauty. She was required
21 to sign a nondisclosure agreement before she started talking to
22 Give Back Beauty.

23 Very soon thereafter, Britney Spears' manager starts
24 raising concerns with Revlon specific to Give Back Beauty, says
25 we are concerned about Give Back Beauty. That's on April 5.

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1 On April 8, Ms. Kidd accepts an offer to go work at
2 Give Back Beauty. She is currently CEO of their lifestyle
3 division working in fragrances. She gives notice on April 9.
4 She declines to tell anyone at Revlon where she is going. She
5 won't say. Soon after --

6 THE COURT: Should I infer anything nefarious about
7 that? I don't know how these companies work. They are all
8 very, very competitive, I imagine. If you move from one
9 company to another, everyone wants to keep everything pretty
10 close to the vest.

11 MS. ECHTMAN: What I understand, it's not unusual for
12 folks not to say where they are going, but to keep it so secret
13 and to actually have an NDA that prohibits you from telling
14 anyone where you are going to be working, this is not the CIA.
15 You are allowed to say, I'm working at a fragrance company.
16 This is the fragrance company that I'm going to be working at.
17 I think it is unusual to have that level of secrecy where you
18 are required to sign something that says, I won't tell anyone
19 that I'm talking to you, and I won't tell anyone the name of
20 the company that I'm going to. I think there is something
21 nefarious about that that you can infer. When I left my firm,
22 I said, I am going to Steptoe. It's a competitor. Why
23 wouldn't you disclose where you are going next.

24 THE COURT: Exactly how many days before you went to
25 Steptoe did you tell them?

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1 MS. ECHTMAN: I had a partnership agreement and a
2 notice provision, so it was at least 30.

3 April 16, Britney Spears' manager reaches out to
4 Revlon again, talks to Marni Shepard, and says: I heard from
5 GBB. They said they are taking the head of your fragrance
6 business and your whole core team is going with her.

7 This is while Ms. Kidd is still senior VP, has a duty
8 to Revlon. She won't say anything. But GBB is going around
9 her and getting word to the Britney Spears team that she is
10 leaving and they are taking her. And this is in the middle of
11 the very critical time that Revlon is trying to close its
12 extension that it has spent months and months negotiating with
13 the Britney Brands team.

14 As you can see from this timeline, there are drafts
15 going back and forth. On April 18, Alexandra Kopp at CAA sends
16 a provided final agreement for Revlon's signature.

17 April 24, Revlon's CFO signs the agreement and sends
18 it back.

19 Then on April 26, Britney's team starts equivocating.

20 Mr. Brondi and Ms. Kidd say that, on April 30, GBB
21 told Vanessa Kidd, who is still at Revlon, that they inked a
22 deal with Britney Brands, and they are picking up the license
23 on January 1, 2025.

24 The next day Ms. Kidd participates on a call with
25 Marni Shepard at Revlon and with Christian Carrino at CCA to

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1 talk about getting Britney Spears' signature on the extension
2 agreement. Mr. Carrino says the Britney Brands is not ready to
3 commit. Ms. Kidd acknowledges she was on that conversation,
4 she was a party to it. She said not a word. She knew that GBB
5 had signed a deal with Britney Brands that picked up when the
6 Revlon deal expired.

7 That same day, the forensic analysis shows Ms. Kidd
8 opened up Revlon's licensing agreement and reviewed it on the
9 Revlon system, the licensing agreement that she knew Revlon
10 wasn't renewing, but she knew that in her new job she would be
11 working on.

12 THE COURT: But she was still working for Revlon at
13 the time, correct?

14 MS. ECHTMAN: She was still working for Revlon.

15 THE COURT: Then looking at those types of license
16 agreements would be within her duties and responsibilities at
17 Revlon.

18 MS. ECHTMAN: She claims that she wasn't involved in
19 the extension negotiations. She was a bystander. They were
20 being handled by Ms. Shepard, and she was just along for the
21 ride.

22 THE COURT: But she was there on the phone with
23 Hudson, was it?

24 MS. ECHTMAN: Mr. Carrino, yes, she was there on the
25 phone.

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1 THE COURT: I suppose, you know, one could see a way
2 in which Ms. Kidd was trying to maneuver her clearly conflicted
3 position at the time in a way that she didn't betray either her
4 old employer or her upcoming employer.

5 MS. ECHTMAN: But she did betray her old employer by
6 sitting in a meeting on May 1, 2024, and not telling her
7 colleagues that this is futile because Britney Brands has
8 signed with GBB.

9 THE COURT: OK.

10 MS. ECHTMAN: This is not a business opportunity that
11 you have an opportunity for anymore. They have signed with
12 someone else. That was material information to Revlon. She
13 was a senior VP, and she did not disclose it.

14 THE COURT: Maybe you have a faithless-servant claim
15 against Ms. Kidd.

16 MS. ECHTMAN: We do have a faithless-servant claim
17 against Ms. Kidd, but it's also circumstantial evidence in our
18 misappropriation claim.

19 We don't have to show at this stage definitively
20 everything that was done. I mean, the information is uniquely
21 in the hands of the defendants. We need to show a likelihood
22 of success on the merits or sufficient questions going to the
23 merits that justify the relief.

24 THE COURT: I suppose, and I am going to ask a
25 question here concerning the types of inferences that I can

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1 make.

2 I have to say that wasn't until I received defendants'
3 motion papers that I learned that all of this was taking place
4 in the aftermath of Revlon having declared bankruptcy, coming
5 out of bankruptcy, having had a meeting at which they were told
6 there is going to be substantial changes.

7 And that sort of puts a different light on everything
8 that we are talking about here right now, correct?

9 MS. ECHTMAN: Your Honor, they were free to go work at
10 another company. They just couldn't take Revlon's stuff with
11 them. We know for certain that Ms. Fass took Revlon's stuff
12 with her. She has admitted it. For Ms. Kidd we have
13 significant evidence that she most likely took Revlon's
14 confidential information with her.

15 So Revlon is not saying that these people can't work
16 at Give Back Beauty. They can. They just can't use Revlon's
17 trade secrets competitively against Revlon. They can't take
18 Revlon's trade secrets and confidential information with them.
19 When they walk out the door, they have to leave everything
20 behind.

21 One thing that's not in the record that I know that
22 they don't disclose on the other side is there had been a
23 bankruptcy, there had been a reorganization, and they got
24 retention bonuses for staying at the company. And I believe
25 that Mr. Racich's spreadsheets show that one of the documents

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1 that Ms. Kidd looked at in March of 2024 was when those bonuses
2 would vest.

3 So it wasn't that these folks were living in a realm
4 of so much uncertainty. They had stayed on post bankruptcy.
5 They got bonuses to do it. They were free to talk to other
6 employers. They were free to leave. But they couldn't take
7 Revlon's confidential information with them. They signed
8 employment agreements that said they can't do it. They
9 acknowledged --

10 THE COURT: I understood, and perhaps I'm just
11 misremembering, that Ms. Kidd was looking at that salary
12 information in February of 2024, not March.

13 MS. ECHTMAN: She was looking at salary information in
14 February. In March 2024, she pulled up the agreements that had
15 information on everyone's retention bonuses post bankruptcy.

16 THE COURT: Can I ask you another general question. I
17 don't know that you know the answer to this. But I don't
18 believe I have a Revlon organizational chart. But how closely
19 together on that chart are Ms. Kidd, Ms. Fass, Mr. Mulvihill,
20 and Mr. Romeo?

21 MS. ECHTMAN: Ms. Kidd was a senior VP. She was very
22 high up on the fragrance business. And then the other three
23 individual defendants all reported up to her.

24 THE COURT: All reported to her.

25 MS. ECHTMAN: To Ms. Kidd, correct.

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1 THE COURT: They are part of what I understand to be
2 the fragrance group.

3 MS. ECHTMAN: Yes.

4 THE COURT: How large otherwise was the fragrance
5 group?

6 MS. ECHTMAN: I know that there were other people in
7 the fragrance group. I don't know how many.

8 THE COURT: All of them worked in some way or fashion
9 on the Britney Spears account?

10 MS. ECHTMAN: Ms. Kidd had responsibility for Britney
11 Spears as a senior VP, and Mr. Romeo had day-to-day
12 responsibility for Britney Spears. Ms. Fass worked primarily
13 on Juicy, which is the contract she took with her, which is a
14 very significant and lucrative account, and Mr. Mulvihill, I
15 don't know the full extent of his responsibilities, but I
16 believe that as other members of the team were leaving, his
17 responsibilities were broadened.

18 THE COURT: Just so that I understand, when you say
19 that Ms. Fass took the Juicy Couture contract with her, it was
20 just the contract itself, not the account. The account is
21 still with Revlon.

22 MS. ECHTMAN: The account is still with Revlon, but
23 one of the things we need to redress here is a significant risk
24 that Ms. Fass will try to take that account over to Give Back
25 Beauty.

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1 Then what we have on Ms. Kidd's last day at Revlon is
2 very unusual and suspicious behavior. On May 3, which was her
3 last day, it was a Friday, at 4:25 p.m., there was a folder
4 created on Revlon's servers titled V. Kidd desktop 5/3/24.

5 Ms. Kidd said that it was her practice to occasionally
6 move documents from her desktop to the server or that she was
7 doing this on her last day in order to secure very confidential
8 and sensitive information so it would continue to be available
9 to Revlon. She says that after she did this, she deleted all
10 of the files on the desktop of her laptop because apparently
11 she didn't trust Revlon IP that it wouldn't clear the laptop
12 before giving it to someone else who might not have proper
13 access to that information.

14 THE COURT: Do you know whether she did that at home
15 or in the office?

16 MS. ECHTMAN: She was at home that day.

17 THE COURT: At home.

18 MS. ECHTMAN: Her last day in the office at 55 Water
19 Street was May 2, according to the swipe records, and that's in
20 Linda King's declaration, so she was working from home. She
21 had her laptop at home on May 3. She mailed it back by Fed Ex
22 on May 6. So on May 3, she is at home.

23 And what our computer forensic expert found is that
24 from 9:45 p.m. on a Friday night until 12:15 a.m. on a Saturday
25 morning, she was going into files that were already resident on

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1 the Revlon servers. She opened about 259 files.

2 Now, Ms. Kidd says what she was doing was moving them
3 to the server, but she wasn't opening them from her C drive on
4 her laptop. She was opening the server copies. Those are the
5 artifacts that Mr. Racich found on her laptop.

6 Now, if she was trying to preserve information for
7 Revlon and make sure it was on the servers and was moving it,
8 there is no reason why she would wait until after 9:00 at night
9 to do it. She would have done it during business hours to make
10 sure she still had access to the system, and then she went in
11 and she deleted all of her browser activity. So she deleted
12 any evidence of what she had been doing over the Internet in
13 the time prior to returning her laptop. She did this right up
14 until the very edge of when she lost access to the Revlon
15 system.

16 THE COURT: When did she lose access?

17 MS. ECHTMAN: 1:39 a.m. on May 4.

18 THE COURT: That's a curious time to take access away.

19 MS. ECHTMAN: I don't know if it's automated or how
20 they did it, but that's the official time that she lost access.
21 Her last day was May 3. Normally, your last day at work, close
22 of business, you close your laptop, you walk out the door. But
23 9:45 until almost 12:30 in the morning she is on her Revlon
24 laptop, and she is opening files from the server, and she is
25 clearing and deleting things.

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1 THE COURT: I take your point that that all seems
2 curious, at least, but perhaps you could break down
3 Mr. Racich's report for me. Did he definitively find that
4 Ms. Kidd maintained those documents that we are talking about
5 on her laptop?

6 MS. ECHTMAN: He can't know because, as she admits,
7 she deleted everything on her laptop. So when Mr. Racich first
8 got the laptop, his view is, I don't even know if she worked on
9 this laptop. There is almost nothing here. None of this
10 remained resident on her C drive. As Ms. Kidd says in her
11 declaration, she deleted everything. It wasn't in her
12 recycling bin. It was fully deleted off of her laptop.

13 THE COURT: What we have in Mr. Racich's conclusions,
14 therefore, is what he could determine by reference to Revlon's
15 servers?

16 MS. ECHTMAN: So what he could determine was, looking
17 at the hard drive on the laptop, he could see artifacts that
18 show that documents with particular file paths were opened at a
19 particular time. Those file paths match Revlon's servers.

20 And within those artifacts he can also see the date
21 and time that the folder, the master folder on Revlon's
22 servers, was created. So he could see, and it's in his
23 spreadsheets, that the V. Kidd desktop folder was created
24 during work hours, at 4:25 p.m., but he could see that.

25 Ms. Kidd, after her employment with Revlon had

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1 officially ended, was going into the Revlon servers and opening
2 up files that were at that time resident on those servers,
3 because those are the file paths he can see in the hard drive,
4 artifacts of what was done, but he can't see the documents.
5 The documents are on Revlon's servers.

6 THE COURT: From your perspective, what was Ms. Kidd's
7 official last time at Revlon?

8 MS. ECHTMAN: I think her employment ended at the
9 close of business on May 3, 2024. It didn't end in the early
10 morning hours of May 4. Her last day was May 3.

11 THE COURT: 5:00, 5 p.m.?

12 MS. ECHTMAN: 5 p.m., 5:30, whatever their business
13 practices are. After that, technically she was no longer a
14 Revlon employee.

15 THE COURT: But she still had the laptop.

16 MS. ECHTMAN: She still had the laptop. She was a
17 senior VP. They trusted her to send it back. They allowed her
18 to have it on her last day.

19 What we have here is highly suspicious activity, and
20 it's activity that's consistent with printing all these
21 documents, doing a mass print job, or transferring them to an
22 Internet repository. They could have gone to a Google Drive.
23 They could have gone to a box site. They could have gone to
24 some file transfer protocol online.

25 THE COURT: A box site.

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1 MS. ECHTMAN: A box is an online document repository.

2 THE COURT: Like Dropbox.

3 MS. ECHTMAN: Yeah, yes.

4 That's the information we have about Ms. Kidd. While
5 she put in a declaration, she does not explain at all why she
6 was doing this so late at night.

7 Then we have Mr. Romeo. Mr. Romeo says that while
8 working at Revlon he has Google Documents in order to do his
9 work, that they included information from Britney Brands
10 influencers that he had to approve. It appears that he
11 maintains access to these Google Documents because he accessed
12 them with his personal Gmail account. He says he hasn't used
13 them, but this is also Revlon's information, Revlon's property.

14 THE COURT: Explain that for me, if you would. They
15 are called Google Documents. Are they Revlon documents? Are
16 they Revlon Google Documents?

17 MS. ECHTMAN: They are documents from Revlon-hired
18 influencers that were provided to Mr. Romeo through a Google
19 documents application. So if someone wants to share a Google
20 Document with you, you usually go into it with an email address
21 and that could be your Gmail address. You have to get
22 permissions to it.

23 THE COURT: So these are documents that Mr. Romeo
24 would receive from TikTok influencers?

25 MS. ECHTMAN: Could be TikTok, could be Instagram.

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1 Social media influencers, whatever media they might be using.

2 THE COURT: I assume, I don't know, that these social
3 media influencers would not be subject to the same ethical
4 training onboarding as Revlon senior executives.

5 MS. ECHTMAN: I expect they are independent
6 contractors.

7 THE COURT: So there wouldn't as much security
8 surrounding these Google Documents as there would be licensing
9 agreements and contracts, etc.

10 MS. ECHTMAN: I would expect so.

11 Then we have Mr. Mulvihill.

12 Now, the forensic examination of Mr. Mulvihill's
13 laptop shows that he was accessing a Google Drive. This is
14 another Google-based medium where you can download documents.
15 So he was using a Google Drive from his Revlon computer. He
16 doesn't explain what he was using this Google Drive for. We
17 don't know what's resident on his Google Drive.

18 But in his final days at Revlon he was looking at a
19 lot of confidential Revlon information that he may have been
20 using in the ordinary course of business, or he may have been
21 downloading to his Google Drive. His declaration doesn't say
22 anything about his use of the Google Drive, doesn't provide any
23 explanation for why he was using a Google Drive from his Revlon
24 computer. So we need to know what is on that Google Drive.

25 THE COURT: I guess the forensic examination could

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1 determine what documents at all he may have put or not put on
2 that Google Drive.

3 MS. ECHTMAN: The forensic examination, and you can
4 ask Mr. Racich, who is here in the courtroom, there is just so
5 much it can detect. If there is an artifact left behind, it
6 can get some evidence, but what the forensic examination can
7 detect is really the tip of the iceberg. It's only about the
8 fingerprints that are left behind on the hard drive of a
9 laptop. It can't see all the documents. It can't see all the
10 activity. If someone clears data, it can't be seen. We know a
11 lot, but we certainly don't know everything.

12 Now GBB says that we don't have evidence that it has
13 anything, that it took anything, that it used everything.
14 That's not accurate. Ms. Fass admitted in her declaration that
15 she opened documents from her external hard drive while she was
16 working at GBB. She doesn't say what she did with them. She
17 says she didn't share them, she said she didn't download them,
18 but she doesn't say she doesn't use them. In fact, by opening
19 them, she used them, and she very glaringly fails to tell us
20 which documents she opened. The majority of documents on there
21 appear to be Revlon documents. We don't know the whole
22 universe. We don't know everything that was in those folders,
23 but we know that there are multiple folders that have Revlon in
24 the name.

25 We know that when Ms. Fass was working at GBB, she was

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1 opening these Revlon documents, she was using them, and that is
2 attributable to GBB. She was using them and doing her work at
3 GBB.

4 We also know that Vanessa Kidd and Dominick Romeo have
5 responsibility at GBB for working on their upcoming Britney
6 Brands business. This is the very same business that they
7 worked on at Revlon. We know that the documents that Ms. Kidd
8 opened between May 3 and May 4, after the close of business,
9 include development blueprints for marketing Britney Spears
10 fragrances and coming up with additional Britney Spears
11 fragrances for Revlon up through 2025.

12 Now, these documents that we know she accessed include
13 presentations that she did for Liz. Liz is the name of the
14 Revlon CEO. So these are very highly confidential blueprints
15 and information about what Revlon was going to do to develop
16 its marketing -- for its marketing plans going forward for
17 Britney Spears. These are things that she accessed after the
18 close of business on her last day of work. She also accessed
19 sales and royalty data for the Britney Spears line.

20 Ms. Kidd acknowledges that these documents that were
21 on her desktop of her computer are confidential and sensitive
22 to Revlon. These are trade secrets she was going through, and
23 we think likely taking after she left the company. The law
24 does not allow Vanessa Kidd and Dominick Romeo to use Revlon's
25 trade secrets and confidential information concerning the

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1 commercialization of Britney Fragrances for the benefit of GBB.
2 They can work at GBB in fragrances. They can have jobs there.
3 But they can't take Revlon's confidential trade secret
4 marketing plans and implement them at GBB. That's not allowed
5 under the law. That's wrongful use of Revlon's trade secrets,
6 that it's prohibited under New York law and under the Defend
7 Trade Secrets Act.

8 We also know that GBB, for its part, has been going to
9 Revlon's fragrance supplier, it's called a fragrance house, and
10 asking for Revlon's formulas.

11 THE COURT: What's wrong with that?

12 MS. ECHTMAN: The fragrance house said no. So they
13 went to them in June. The fragrance house comes to Revlon.
14 Revlon says: It's ours. It's confidential proprietary. You
15 can't give it to them.

16 They send another letter in August. They have Britney
17 Brands send a letter in August, that's attached as Exhibit 4 to
18 Mr. Corrado's declaration, that says: GBB is going to have our
19 worldwide exclusive rights come January 1. We need to help get
20 them ready. We are hereby telling you to share with them the
21 formulas for the Britney Brands fragrances.

22 THE COURT: What does fragrance house do?

23 MS. ECHTMAN: The fragrance house actually sends an
24 email to Revlon and says: We are going to share all this
25 information unless you quickly tell us not to. And Revlon

O9PMREVVH

1 says: You can't share it.

2 THE COURT: And?

3 MS. ECHTMAN: As far as we know, they didn't share it.

4 THE COURT: What information that you have that it was
5 GBB that made the Britney people do this?

6 MS. ECHTMAN: First they said -- it's a logical
7 inference. That's what we have. First, they sent out a
8 generic letter that's not directed to any particular suppliers
9 that seems to be going out to all the suppliers in the
10 marketplace saying GBB is going to have this license. We want
11 you to work with them on the transition. And we know that the
12 fragrance house said no because we told the fragrance house to
13 say no, you can't have our proprietary and confidential
14 information.

15 Then, two months later, another letter goes out
16 specifically to the fragrance house, and that says: We hereby,
17 Britney Brands, are telling you to give GBB the fragrance
18 information. They can talk to fragrance houses. But they
19 can't try to induce the fragrance houses to give them
20 information that they have already been told is confidential
21 and proprietary to Revlon. That's what's wrong there because
22 some supplier is going to make a mistake and is going to turn
23 it over, whether it's inadvertently or purposefully. You can't
24 go out in the market and say to Revlon's vendors, give us
25 Revlon's confidential information and pricing.

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1 So it's not just that they asked for the -- we know
2 that in the letter they asked for the formula. They also asked
3 for Revlon's pricing information. And they asked for
4 information about the ingredients and the formula and the
5 levels of the oils that are used.

6 As far as we know, of the fragrance house hasn't
7 turned it over. They are not allowed to turn it over.

8 But we do know that GBB is going out in the
9 marketplace and doggedly trying to get a hold of Revlon's trade
10 secrets. To the extent they tell you we are not using them, we
11 don't want them, that's not credible. We know that they wanted
12 them, and they ever trying to get them, and they are doing
13 everything in their power to try to obtain information that
14 they are not allowed to have.

15 So the definition of trade secrets is broad. I
16 understand that the defendants have said we have not shown
17 trade secret. We have. The Juicy Couture agreement is a trade
18 secret. The documents that are attached to Mr. Cornock's
19 declaration are trade secrets. There are sentencings of
20 financial reports. There are marketing blueprints. There is
21 marketing decks that are about future prospects for licensing
22 deals. All of this information is closely guarded. It's
23 confidential.

24 It's extremely harmful to Revlon, for example, for GBB
25 to have access to its pricing with Juicy Couture. It makes it

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1 incredibly difficult for Revlon to compete in the marketplace
2 and negotiate licensing agreements if a competitor knows its
3 royalty rates.

4 THE COURT: Ms. Echtman, why don't you assume that I
5 agree with you, that to the extent that GBB has these types of
6 documents, licensing agreements, formulas for fragrances, etc.,
7 that would constitute trade secrets; in other words, maybe
8 streamline your presentation.

9 MS. ECHTMAN: I'm happy to streamline my presentation.

10 We have shown trade secrets. We have shown that the
11 information is competitively sensitive, which they say we have
12 not secured the information. We have. Revlon has done all the
13 standard things that a company does to secure its information,
14 so we don't have to go over that.

15 We have got the code of conduct. This information has
16 value. I think the Court understands that. There is
17 competition in the fragrance business. And we do have evidence
18 showing that the individual defendants took Revlon's trade
19 secrets on behalf of, for the benefit of GBB on the way out the
20 door as they were leaving to work for a competitor.

21 And there is also the risk. They say there is no
22 irreparable harm. There is immense irreparable harm. This is
23 not about -- this is not just about the fact that it's our
24 position in our
25 tortious-interference-with-prospective-economic-advantage claim

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1 that they wrongfully took the Britney Brands agreement. That
2 is a separate claim.

3 This is about having now competitively sensitive data
4 that we are at risk that they are going to use to unfairly
5 compete with Revlon in the marketplace and that is very
6 difficult to quantify. It's very difficult to know the extent
7 that they are using it, and based on the head-to-head
8 competition and the overlapping roles that these individuals
9 have between Revlon and GBB, there is a significant risk that
10 that information is being used and is being disseminated and
11 that is irreparable harm.

12 This is just a chart showing the overlap in the
13 responsibilities of the individual defendants between their
14 jobs at Revlon and their jobs at GBB.

15 There is also the breach of the employment agreements
16 which prohibit them from taking Revlon's trade secrets, using
17 Revlon's confidential information to compete with them, and
18 then they are also prohibited from soliciting Revlon's business
19 partners to cease doing business with Revlon for one year post
20 departure.

21 THE COURT: So they can go to the fragrance house and
22 say, make Britney cologne for us now.

23 MS. ECHTMAN: They can go to a fragrance house and
24 say, make us a new Britney cologne. They can work with
25 fragrance houses. They can't say to the fragrance house, don't

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1 work with Revlon anymore. The former employees can't do that.
2 They can't go to Juicy Couture and say, don't work with Revlon
3 anymore. Bring your business over to GBB. They can't go to
4 Revlon's bottling suppliers and say, don't work with Revlon
5 anymore. They can work with folks, but they can't induce or
6 solicit anyone to stop working with Revlon.

7 THE COURT: But other GBB executives can.

8 MS. ECHTMAN: They can, as long as they are not using
9 Revlon's confidential information to do it.

10 This is the point that the quantification of damages
11 is elusive, given the difficulty in ascertaining how much of a
12 competitive advantage GBB would have based on Revlon's trade
13 secret information.

14 And the employment agreements themselves acknowledge
15 irreparable harm from a breach, and they consent to the entry
16 of an injunction without a bond. The balance of equities favor
17 Revlon here because GBB and the individual defendants have no
18 legitimate interest in Revlon's trade secrets, and there is no
19 harm that would result from an injunction that prevents them
20 from using or maintaining Revlon's trade secrets. The public
21 interest, overall, favors protecting trade secrets. No bond is
22 needed here.

23 Mr. Brondi says, in a very conclusory fashion in his
24 declaration, that an injunction would disrupt his business and
25 that he would need \$5 million of security, but they don't

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1 articulate how return of Revlon's trade secrets, an injunction
2 enjoining them from using Revlon's confidential information to
3 compete with Revlon, harms them at all. They say they don't
4 want to use Revlon's formula. They are going to come up with
5 their own. Great. They should do that. They say that they
6 are a very established business, and they have got lots of
7 phones and resources, so they don't need Revlon's confidential
8 information in order to do business. There should be no
9 disruption to their business. And if there would be, that's
10 not something that would need to be secured against because
11 it's wrongful.

12 THE COURT: Let me ask you this. Do you know how old
13 GBB is?

14 MS. ECHTMAN: What we understand from the records at
15 the Delaware Secretary of State is that the different entities
16 were formed in 2022ish. In the U.S. it's a new company. I
17 don't know the dates that any of the European entities were
18 formed.

19 So the relief we specifically ask from the Court is
20 that we have an injunction that mandates return of all of
21 Revlon's confidential materials, that the defendants be
22 enjoined from disclosing or using the plaintiff's confidential
23 information, whether it's something that was affirmatively
24 taken or something that might have been committed to memory to
25 the individual defendants, that the former Revlon employees be

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1 walled off from the Britney Brands account, and that they be
2 barred from soliciting Revlon's business partners. We also ask
3 that GBB be enjoined from attempting to obtain Revlon's
4 confidential information from Revlon's suppliers or customers.

5 THE COURT: Let me ask you a legal question. I think
6 you said at the outset that misappropriation is sufficient to
7 establish a violation of the Defend Trade Secrets Act. Is mere
8 appropriation enough to move the needle in favor of issuing an
9 injunction?

10 MS. ECHTMAN: Yes. The Defend Trade Secrets Act
11 specifically provides for an injunction as a form of relief.
12 So when we say misappropriation, under the Defend Trade Secrets
13 Act it can take three forms. It can be wrongful acquisition,
14 wrongful disclosure, and wrongful use. So we've shown all
15 three of those prongs, and they are all sufficient for
16 injunctive relief.

17 THE COURT: I'm sorry. How have you shown use?

18 MS. ECHTMAN: Ms. Fass opened the folders on her
19 external hard drive while she was at GBB.

20 THE COURT: I guess I'm not understanding how that
21 constitutes use.

22 MS. ECHTMAN: She is an employee at GBB. She is
23 sitting at her GBB laptop. She plugs in a hard drive, an
24 external hard drive full of Revlon folders. She opened them
25 up. I think that's use.

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1 The fact that they have refused to disclose what's on
2 that hard drive doesn't mean that stuff wasn't used. We know
3 it's got Revlon folders. We know they took it. We know she
4 looked at it. So if she is opening the documents after she has
5 left Revlon, she is using them. This is also potential
6 disclosure if those got captured by the GBB system.

7 THE COURT: Thank you.

8 MS. ECHTMAN: Thank you.

9 THE COURT: Ms. Schmelz.

10 MS. SCHMELZ: Thank you, your Honor.

11 Mr. Keech, my colleague, is going to address the
12 motion for preliminary injunction. I would like to hand out
13 our presentation so that Revlon's counsel has it.

14 THE COURT: Do I have it?

15 MS. SCHMELZ: We are about to show it to you. If we
16 could approach to provide you with a copy as well.

17 THE COURT: Provide one over there if you have one.

18 MR. KEECH: Good afternoon, your Honor, may it please
19 the Court, Brian Keech from K&L Gates, and I have the pleasure
20 of representing the defendants in this matter.

21 A couple of administrative items, if I may.

22 Number one, I understand that the Court granted the
23 oral *pro hac vice* motions, is that correct?

24 THE COURT: Correct.

25 MR. KEECH: Thank you, your Honor.

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1 Number two, during the course of my presentation, I do
2 intend to reference and, on occasion, display material that has
3 been designated by the parties as confidential and/or
4 attorneys' eyes only. I don't want to run afoul of any
5 obligations under the protective order, but I don't think that
6 it's possible for me to be as general as the Court might have
7 expected in the initial comments.

8 THE COURT: Fine. I guess I would just ask you to
9 know, one, when you're coming up on one of those documents and,
10 two, I don't know, besides my staff, who in here should not be
11 in here. You are going to have to tell me, both sides, who
12 should leave the courtroom. I can't police that.

13 MS. SCHMELZ: Your Honor, we have with us all counsel
14 that are present here, except we also have Mr. Corrado present
15 as well. Most of the material is -- we are fine to do it in
16 open court and have Mr. Schwartz stay here. I think, as
17 counsel indicated, most of the materials are there, so it's up
18 to them.

19 MS. ECHTMAN: Your Honor, if they are going to be
20 using our materials that we filed as attorneys' eyes only,
21 Mr. Brondi cannot be in the courtroom.

22 THE COURT: I'm sorry.

23 MS. SCHMELZ: Mr. Schwartz as well is also outside the
24 purview of the attorneys' eyes only.

25 THE COURT: In other words, only two people have to

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1 leave the courtroom.

2 MS. SCHMELZ: No, I don't believe so. I believe they
3 indicated there is other individuals here from Revlon who are
4 not outside counsel at Steptoe. Anybody other than attorneys
5 from K&L gates or from Steptoe are not included within the
6 attorneys' eyes only.

7 MS. ECHTMAN: Of course, Mr. Schwartz can see Revlon's
8 own materials and so can Mr. Cornock.

9 To the extent it's Revlon's attorneys'-eyes-only
10 designation, our folks can stay, and if we can just get an
11 advanced warning about what's going to be used.

12 (Continued on next page)

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1 THE COURT: Yes, my only direction to you is that
2 you're going to have to tell me. Okay?

3 MS. SCHMELZ: Fair enough.

4 MR. KEECH: Thank you, your Honor.

5 Your Honor, plaintiffs brought this case with a
6 theory. Their theory was having lost the Britney Brands
7 licensing relationship and having discovered that former Revlon
8 employees have gone to work for Give Back Beauty, the loss of
9 the Britney Spears licensing relationship *ipso facto* must have
10 been as a result of nefarious conduct and trade secret
11 misappropriation.

12 I want to do three things in my presentation today to
13 show why plaintiffs not met their burden. Number one, I think
14 the Court was right in asking about the background. Certainly,
15 when I was going through the papers to prepare, it was helpful
16 for me to understand who exactly these players were and what
17 exactly they did. Because that's key to understanding what the
18 players own and what might have been misappropriated, if
19 anything.

20 Number two, I want to explain why it's the case that
21 Revlon has not met its burden to show irreparable harm. It is,
22 contrary to the presentation we just heard, not enough to
23 simply show misappropriating or irreparable harm in the Second
24 Circuit. There must be an imminent risk of disclosures of the
25 trade secrets, and they haven't shown this on this record.

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1 Number three, and my colleague Ms. Love will address
2 this, they have not shown a need for discovery outside of the
3 normal course. As we flagged for the Court in our papers they
4 asked for 72 document requests, seven forensic inspections
5 three 30(b)(6) depositions, four individual depositions, and an
6 extraordinary overall amount of discovery that we think is not
7 justified on an expedited basis.

8 First of all, with respect to the background, Give
9 Back Beauty is my client. It is a globally operated beauty
10 group. It operates with world renowned brand partners,
11 individual and corporate, to create, develop, and support
12 fragrance models.

13 The typical model of my client's business is as
14 follows, there is a brand partnership, my client secures a
15 manufacturer and coordinates marketing and distribution and
16 then consumers purchase and use fragrances in stores. It is
17 not a cosmetics or fragrance manufacturer and, this is key.

18 I also want to talk about the former Revlon employees
19 who we represent, Mr. Kidd, Ms. Fass, Mr. Romeo, and
20 Mr. Mulvihill.

21 Revlon purchases Elizabeth Arden, goes through
22 bankruptcy and experiences upheaval. We know from what our
23 clients have said, there was a direction to move away from the
24 brand portfolio and our client's employees felt concerned about
25 their jobs. They started looking elsewhere. From May 13,

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1 2024, through to June 10, 2024, the individual defendants all
2 joined GBB. That's key, I think, to understanding exactly what
3 happened here.

4 We also have Britney Brands and Britney Brands is not
5 quite how plaintiffs have described it. What Britney Brands
6 does is it manages and licenses the global portfolio of Britney
7 Spears trademark, copyright and other rights. That includes,
8 as relevant to this case, Britney Spears's branded fragrances.
9 Plaintiffs previously, Revlon previously has served as the
10 exclusive licensee to market and distribute Britney Spears's
11 branded fragrances. Plaintiffs never manufactured and again
12 that's key, and I'm about to discuss something that is touching
13 on attorney's eyes only information. I want to flag that for
14 the Court.

15 THE COURT: Okay. So should the gentleman step out?

16 MR. KEECH: It's plaintiff's information. So --

17 THE COURT: Okay. So Corrado --

18 MS. ECHTMAN: Mr. Brondi, yes.

19 THE COURT: Mr. Brondi.

20 (Mr. Brondi exits courtroom)

21 THE COURT: Will someone from your side remember to
22 call him back in.

23 MR. KEECH: Thank you, your Honor.

24 To be clear, what I'm saying with respect to the
25 protective order, it is not a concession that any of this

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information is properly subject to sealing.

THE COURT: I understand.

MR. KEECH: XX

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MR. KEECH: Britney Brands sent a letter to the fragrance house saying that GBB is the exclusive licensee as January 1, 2005, please share with GBB the oils and the blends, the ingredients for the fragrances so that they do their job.

THE COURT: And that letter was sent to Givaudan?

MR. KEECH: Yes, exactly.

THE COURT: Why didn't Givaudan contact Revlon and say, hey, can we give them this formula?

MR. KEECH: That's a great question. Givaudan, unfortunately, is a nonparty to this action. They can't

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1 explain why it is they did that. That would be a question that
2 I would certainly ask Givaudan's representatives at deposition
3 if I were --

4 THE COURT: XX
5 XX
6 XXXXXXXX

7 MR. KEECH: Here's the thing, your Honor, here is a
8 possible explanation that makes sense, at least in my mind.
9 Until December 31, 2024, it is true that Revlon is the
10 exclusive licensee for these products, these marks, et cetera.
11 An overly cautious attorney at Givaudan, seeing these facts,
12 might think, XX
13 XX
14 XX
15 XX
16 XX
17 XX
18 XXXXXXXX

19 And, in fact, I don't hear any suggestion from Revlon
20 that's what Givaudan has actually said to them. What I think
21 they have said is that Givaudan, acting consistent with a party
22 that wants to insure they are not liable, they don't have any
23 exposure, respected Revlon's rights as to the exclusive
24 licensee until December 31, 2024, they went to Revlon and then
25 Revlon wanting to -- I don't know, I don't have the evidence in

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1 the record -- but perhaps wanting to hold up the transition
2 said, no, you may not share anything with GBB. That's an
3 explanation that makes sense. But of course we don't have
4 evidence in the record from Givaudan as to their motivation
5 when they provided the response that they did.

6 THE COURT: Okay.

7 MR. KEECH: ~~XX~~

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9 ~~XX~~

10 ~~XX~~

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12 ~~XX~~

13 ~~XX~~

14 ~~XX~~

15 So let's talk a little bit about the lawsuit here. On
16 April 29, 2024, and we have that in the record, GBB was awarded
17 the Britney Spears license in the fragrance industry. GBB then
18 did its job. It did its job to prepare to transition. Did its
19 job that Britney Spears asked it to do to ensure continued
20 availability of this fragrance on the market. And then what
21 Revlon did, months later, was they brought this lawsuit.
22 Again, what they suspected was that these employees went over
23 to GBB, they must have taken trade secret information. It's
24 the only way Britney Spears would have wanted to change horses.

25 THE COURT: Why?

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1 MR. KEECH: Why did -- I'm sorry, your Honor clarify,
2 the question?

3 THE COURT: I guess I'm asking why would you believe
4 that that's the thee Revlon's theory?

5 MR. KEECH: I want to give it a little bit more
6 credit. I think that's a fair question. They do have a
7 legitimate concern that their confidential information that it
8 their trade secret may have been misappropriated. That's a
9 fair point. The industry is certainly competitive. But the
10 issue with the motion is that they have not put forth evidence
11 to show that this misappropriation has actually happened or, as
12 key here, that irreparable harm is likely.

13 I want to directly take on the Racich declaration.
14 What Mr. Racich says is there was alleged suspicious access to
15 some of these very key files between May 3, 2024, at 9:45 and
16 May 4 at 12:15 a.m. and May 8th and May 23rd, May 8th, May 22,
17 and May 17. The Britney Brands agreement was signed on
18 April 29, 2024. This is in the record. We have the signature
19 from Give Back Beauty. We have Ms. Spears's signature as well.

20 So the timeline that they have advanced, and I think I
21 actually heard some kind of acknowledgment of this, it just
22 doesn't make sense anymore. The truth is that Give Back Beauty
23 had negotiated for years trying to get the Britney deal. They
24 were repeatedly rebuffed, time after time, my client was told,
25 it's not the right time. It's not the right time.

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1 Then the bankruptcy happens. After the bankruptcy
2 happens, suddenly there is an interest from Britney Brands
3 moving this deal over there. Is a sense from Britney Brands --
4 again, another nonparty who is not here. We don't have
5 evidence as to why exactly they did what they did except what
6 they told our clients, right. They decided Britney Brands,
7 that it was the right time to change horses and they did so, as
8 key to this motion, well before any of the alleged suspicious
9 access that's happened.

10 THE COURT: If you could overlap the timeline, I hope
11 you can, when Ms. Kidd started speaking with GBB.

12 MR. KEECH: Sure. So Ms. Kidd started speaking with
13 GBB in March of 2024. That was, as part of her search for a
14 job. She was concerned about her job. She started speaking
15 with GBB and had interviews, the content of which is the
16 subject of multiple declarations from GBB in March and April of
17 2024.

18 THE COURT: So she had, as I understand it, she had
19 already been made an offer before GBB signed with Britney
20 Brands?

21 MR. KEECH: Yes, that's correct.

22 THE COURT: Okay.

23 MR. KEECH: Again, this timeline I think is very key
24 in understanding the irreparable harm theory.

25 After that, Revlon waits months before doing anything.

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1 On April 15 of 2024, we have evidence from Revlon that Ms. Kidd
2 informed a senior executive that Ms. Kidd tendered her
3 resignation. Revlon does nothing at the time to cut off
4 Ms. Kidd's access, despite the logical inference that Ms. Kidd
5 was taking another job within the fragrance industry.

6 On May 30th, 2024, at the latest we have evidence from
7 Revlon right now saying that Britney has closed -- they learned
8 that Britney has closed a licensing agreement with another
9 partner in the beauty and fragrance space that takes effect
10 January 1, 2025. And then we have another Revlon executive
11 saying they learned in late June of 2024 that these former
12 employees have been hired by and were working at GBB.

13 Well, Mr. Racich says that he received the drives, he
14 performed forensic analysis and investigation on the devices
15 when they were received by him on July 25. Weeks and months go
16 by and there is no explanation for why Revlon did not do
17 anything more than they did to provide the drives, *et cetera*,
18 so Mr. Racich or otherwise.

19 THE COURT: As far as you know, when did Revlon learn
20 that not only had Britney Brands signed with another
21 manufacturer, another marketer, but that it was GBB and, by the
22 way, their fragrance team was at GBB?

23 MR. KEECH: My understanding, your Honor, is that
24 Revlon learned about this no later than April of 2024. Okay.
25 They learned that Ms. Kidd had left and was going to GBB. Let

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1 me say it a different way, they had various pieces of the
2 puzzle that they put together from April, May and the latest
3 June of 2024.

4 THE COURT: But even Ms. Kidd in her declaration, as I
5 recall, says she didn't tell anyone at Revlon that she was
6 going to GBB, and, in fact, felt duty bound not to tell.

7 MR. KEECH: Correct. That's a fair point of
8 clarification. Ms. Kidd did not tell, according to the
9 evidence that we have, she did not tell Revlon that she was
10 going to GBB in April of 2024. That was a fact that they
11 learned subsequent to that.

12 I think the point still remains though, your Honor,
13 there was significant point of delay. It wasn't years, yes.
14 It wasn't six months, yes. It wasn't a more significant period
15 of time, but it was still days weeks and, yes, months that went
16 by before these devices went to Mr. Racich for examination.
17 And we think because the Racich examination comes weeks before
18 they bring their complaint and then weeks before they bring
19 their motion for preliminary injunction, it stretches credulity
20 for them to come here and say there is an emergency because of
21 this deal we lost months ago, that's the main point.

22 THE COURT: When did Steptoe reach out to you?

23 MR. KEECH: Steptoe reached out to us -- I'll let my
24 colleagues address that point.

25 MS. SCHMELZ: Your Honor, we didn't talk to Steptoe

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1 until the lawsuit had been filed. And at that point, they
2 filed the lawsuit without seeking preliminary injunction for
3 relief right away.

4 THE COURT: I understand. But weren't there
5 discussions prior to the lawsuit being filed?

6 MS. SCHMELZ: No. Not between us. There were
7 discussions, to be sure, that started between Revlon and Give
8 Back Beauty in an attempt to try to do this transition, which
9 is customer reason the industry. That didn't involve Steptoe,
10 your Honor, to my knowledge.

11 THE COURT: When did those talks again?

12 MS. SCHMELZ: They were earlier. They would have been
13 after the April 29 agreement had been entered into. As they
14 were trying to go ahead and do the transaction and after
15 Britney Brands had been instructed that they should be going
16 forward with the new deal.

17 THE COURT: Okay. Mr. Keech?

18 MR. KEECH: Thank you.

19 Once again, and this is the conclusion of what I'll
20 say in the irreparable harm portion of what I'll say. There
21 really is no evidence of any misappropriation, no allegations
22 of misappropriation prior to that deal. The deal was finalized
23 months ago and Revlon sat idle until Give Back Beauty began to
24 do its job. In our view they've not met the standard of actual
25 and imminent irreparable harm. These employees are threatening

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1 disclosures. These employees are contacting Juicy Couture or
2 other people with trade secrets, that's the kind of things that
3 cannot be remedied by monetary damages, which really is the
4 standard.

5 THE COURT: Why don't you speak about Ms. Fass,
6 because Ms. Echtman spoke at length about this hard drive that
7 she took with her to GBB, plugged into her GBB computer, opened
8 it, presumably read it. Why isn't that use arguably their
9 trade secret information?

10 MR. KEECH: Right. And I think talking about Ms. Fass
11 is the right point. And moving forward, we did have a slide
12 dealing with Ms. Fass, specifically. Ms. Fass had no
13 involvement in GBB Britney Brands negotiations, that's
14 undisputed evidence. She's never saved any Revlon price secret
15 information, GBB laptop over the systems, that's actually not
16 in the Racich declaration. She's never improperly shared
17 Revlon trade secret information. In fact, she declares that
18 she understands and takes seriously her obligations to protect
19 such information.

20 THE COURT: I understand that she says that. But the
21 information that I have is that she, at the very least, had the
22 Juicy Couture contract, which, you know, on the face of it
23 would seem to be a Revlon trade secret.

24 MR. KEECH: Two things, I was going to address this
25 earlier in my presentation, number one, it's hard to

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1 understand, and this is why courts have the particular burden
2 requirement. It's sometimes hard to understand what exactly we
3 are talking about is a trade secret. There is a bit of a
4 shifting sands issue here. But let's assume for the sake of
5 actor, and I agree with the Court, a confidential licensing
6 agreement with confidential proprietary terms could, under the
7 right circumstances, constitute a trade secret. I have not
8 seen the evidence in the record. I have not seen Mr. Racich
9 declare, go so far as to say, certainly that record, as far as
10 we know it, does not support that she opened any licensing
11 agreement, Juicy Couture or otherwise, while it was connected
12 to a GBB computer and that licensing agreement migrated from a
13 drive to the computer.

14 At most what we have, and I believe this is in the
15 reply declaration, and it probably should be stricken, but most
16 of what we have is conjecture that it could have happened.
17 That by connecting a drive to a computer, it is possible for
18 files to say migrate from that kind of to the computer. We
19 don't know what migrates. We don't know whether the contents
20 of the files migrates. We don't know whether it displays on
21 the computer. We don't know if it's printed or photographed or
22 what. All we know is that it's possible, and at most we know
23 that it's possible for a licensing agreement to go from drive
24 to computer.

25 So assuming that, assuming all the other factors, and

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1 assuming, as I think the Court is correct, that a licensing
2 agreement, under the right terms, could constitute a trade
3 secret, we simply don't have the evidence that plaintiffs claim
4 they have of use of that or even migration of that licensing
5 agreement at GBB.

6 THE COURT: Okay.

7 MR. KEECH: I want to -- I understand the Court is
8 really focused on certain aspects of this. I'm happy to
9 continue to address questions as they come up out of order.

10 THE COURT: Out of order?

11 MR. KEECH: Out of order of my planned presentation,
12 your Honor.

13 THE COURT: Okay.

14 MR. KEECH: We want to just make clear that without
15 irreparable harm, as the Court knows, you need not reach the
16 rest of the merits. If you find no irreparable harm, that's
17 it, at this point. They may have a viable trade secrets claim,
18 but without irreparable harm they don't get injunction.

19 But with the merits, we think they fail as well. We
20 think they fail, because, as I alluded to, Revlon failed to
21 allege what its trade secrets are with sufficient
22 particularity. There are, what we would characterize at least
23 in trade secrets parlance, as cookie cutter declaration that
24 things could be trade secrets, but there is not really
25 particularity.

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1 What we can tell that Revlon alleges are not its trade
2 secrets. XX
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6 THE COURT: Where is Givaudan here?

7 MR. KEECH: Exactly right. You can take judicial
8 notice of the fact that Givaudan filed a lawsuit against former
9 executives who had departed for a competitor in 2008. And from
10 2008 to 2016, just across the river before Judge Sheridan in
11 the District of New Jersey, Givaudan was engaged in very-hard
12 fought litigations against those employees because they had
13 allegedly secreted away fragrance formulas, 584 including the
14 formulas for the Britney fragrances. They said that these
15 formulas were its secret sauce, belonged to it. And its former
16 employees had no right to go to another fragrance house and
17 take these formulas with them.

18 THE COURT: And why did it take eight years, and who
19 won?

20 MR. KEECH: Ultimately, the former employees
21 prevailed. And part of the reason that the former employees
22 prevailed was because Givaudan did not allege its trade secret
23 with particularity. Givaudan, and this is a matter of public
24 record, Givaudan alleged generally that formulas were its trade
25 secrets. And what the Court held was that that's not

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1 sufficient. You need to provide the actual ingredients and the
2 actual proportion of each ingredient in order for the
3 defendants to be able adequately defend against that kind of
4 trade secret claim. And so before trial --

5 MS. ECHTMAN: Your Honor, I just want to move to
6 strike this. Because none of this is in the opposition brief.
7 And they moved to strike our reply declarations --

8 THE COURT: I asked.

9 MS. ECHTMAN: Okay.

10 THE COURT: I asked.

11 MS. ECHTMAN: They don't cite this case. They don't
12 bring up these facts. None of this is in their opposition.

13 THE COURT: But it's going in your favor.

14 Mr. Keech.

15 MR. KEECH: Thank you, your Honor.

16 THE COURT: What I meant by that is what happened in
17 New Jersey, not what's happening here.

18 MR. KEECH: Thank you for the clarification. In New
19 Jersey there was a jury verdict that was in favor of the former
20 employees. It was not because, though, Givaudan did not own
21 its trade secrets.

22 Revlon's deal with Britney Brands is not a trade
23 secret. It's been the subject of other litigation. The
24 identity of vendors is not a trade secret. The identity of
25 fragrance houses is not a trade secret, and we haven't heard

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1 anything, and I'm glad we haven't heard anything that kind of
2 the now marketing lingo, like trends towards 90s and rebirth of
3 90s trends and pop culture, that's not a trade secret either.

4 MS. ECHTMAN: Your Honor, Mr. Brondi in the courtroom
5 while he's quoting from our documents or purporting to quote
6 from our documents.

7 THE COURT: Are you quoting were her documents,
8 Mr. Keech?

9 MR. KEECH: I'm trying to speak generally with respect
10 to things. I'll differ to counsel for plaintiffs if they
11 believe this is too close to protective order information. And
12 we are happy to defer to them in excluding Mr. Brondi from the
13 courtroom.

14 THE COURT: Okay.

15 (Mr. Brondi exits courtroom)

16 MR. KEECH: I don't want to spend too much time on
17 this, but it's our view and we said this in the papers that
18 they haven't alleged trade secrets with sufficient
19 particularity. It is possible that somebody may own and,
20 indeed, I would concede that somebody owns trade secret rights
21 in formulas, that sounds like a trade secret. Somebody may own
22 trade secret rights in a properly protected licensing
23 agreement, that sounds like a trade secret too. But we don't
24 actually know from the compliant and in the papers, which are
25 before the Court, anything other than the kind of shifting

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1 description of what these trade secret are.

2 THE COURT: I don't know that they are shifting. And,
3 again, I ask Ms. Echtman to assume that the types of documents
4 that they described as having been taken, would likely
5 constitute trade secrets. You should do the same.

6 MR. KEECH: Sure.

7 So, you know, the reason that I make that point is
8 only because it is the law of the federal courts that the onus
9 is on the former employer to come forward and put the current
10 employer on specific notice of trade secret protection,
11 including immediately describing the alleged trade secret with
12 precision, so as to inform the defendant exactly what the
13 plaintiff alleged has been misappropriated. So --

14 THE COURT: Can I interrupt, and I don't want to take
15 us too far afield. But I guess I'm not understanding why, if
16 Givaudan owns the formula and went to federal court to enforce
17 its rights, why it didn't or couldn't or wouldn't provide the
18 formula to the district court so that the district court could
19 say, okay, now it's sufficiently particular?

20 MR. KEECH: In that case what happened was that these
21 former employees had gone over to a competitor. And what
22 Givaudan was concerned about, or at least purported to be
23 concerned about, is that the competitor, through the discovery
24 process, would learn about its formulas and would then utilize
25 those formulas in a way that is competitively disadvantageous

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1 to Givaudan. The Court did not accept that, I think rightly
2 so, as a justification to avoid discovery. But the remedy that
3 there the Court ordered was that we're going to strike
4 everything but 34 of the trade secrets you alleged. That's
5 what happened in New Jersey.

6 THE COURT: Okay. You can bring us back.

7 MR. KEECH: Thank you.

8 I want to move on and actually address the agreement
9 that Revlon has with Givaudan. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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MR. KEECH: That's a great question, and I want to
clarify things just a little bit.

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Does that make sense?

THE COURT: That does.

MR. KEECH: Thank you, your Honor.

We have -- I actually don't know that they are claiming this anymore, but there was some suggestion in the papers that the identity of fragrance houses is a trade secret. They've certainly asked for an injunction preventing that.

Well, the identity of fragrance houses is public knowledge. Givaudan's association with Revlon is a longstanding, publicly disclosed fact. It's been disclosed in bankruptcy proceedings. Again, as I mentioned, Givaudan claimed that the fragrance formula was a trade secret.

The Britney deal is also not a trade secret. Now, I know we've had a little bit of a shift. We were talking about the Juicy Couture deal now, and I acknowledge that. But I want to note for the record that the Elizabeth Arden Britney deal was the subject of public litigation in California Superior

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1 Court. Where the agents that claimed to have gotten this
2 lucrative deal for Britney Brands claimed that they were
3 effectively stiffed, so to speak. And they brought suit
4 against Britney Brands. And as part of that suit, they said,
5 "the Elizabeth Arden agreement is highly lucrative for
6 Ms. Spears and provides for royalty and minimum guarantee of
7 over \$15 million." This is Case No. BC458461 in the Superior
8 Court Of California. And they actually attached the agreement
9 as Exhibit B to their complaint. It's long been public
10 knowledge.

11 Retailing information is also public. Again, I
12 haven't heard that as part of the presentation. I don't want
13 to spend too much time on this. But if you go to Revlon
14 website you can find where their products are sold.

15 Again, the banal market lingo, which is part of these
16 documents, that's nonpriority. Talking about the 90s coming
17 back is something that many people have talked about. It's
18 been in the Wall Street Journal, it's everywhere.

19 THE COURT: Is banal marketing a term of art?

20 MR. KEECH: Banal marketing is not a term of art from
21 the case law, if that's the Court's question.

22 From our perspective, Revlon's also failed to make a
23 showing on the remaining factors. I'm not going to spend too
24 much time on the independent economic value and the reasonable
25 measures end of things. But I do want to specifically address

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1 each of the four employees because I do think it's key.

2 Dominic Romeo, I want to have this all up here.

3 April 29, 2024, GBB and Britney Brands enter into their deal,

4 May 7th Mr. Romeo receives his GBB offer letter. What he does,

5 and from my perspective it's not nefarious, he accesses his

6 personal gmail account during his employment with Revlon to

7 perform job duties. Accessing gmail without more, without some

8 evidence that you are sending secret sauce from the server to a

9 gmail account is not evidence of misappropriation. And the

10 fact that he went to a competitor doesn't change that analysis.

11 Reid Mulvihill, May 17, 2024, he receives his GBB

12 offer letter. He learns of the deal request Britney Brands

13 after leaving Revlon. And he accessed the document during his

14 employment with Revlon which he says contained his passwords.

15 Looking at one's own passwords is not trade secret

16 misappropriation, especially when you access that document when

17 you are still employed with Revlon.

18 Now, Vanessa Kidd, I want to address this. We had so

19 much presentation here today on the supposedly suspicious

20 access between 9:45 and 12:15 at night and that seems really

21 strange. I want to just talk a little bit about the math here.

22 First of all, Mr. Racich does not find that any documents were

23 actually misappropriated. He doesn't find any artifacts of the

24 printing. He doesn't find any artifacts of uploading that

25 would have been there on the computer unless eraser technology

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1 was utilized, that he found no evidence of.

2 He mentions and speculates about printing or
3 photographing. It's virtually impossible to print or
4 photograph every page of 259 files in 150 minutes. It just
5 doesn't make sense. To photograph each individual page as you
6 go through, unless you are some sort of expert just does not
7 compute as a matter of math. Ms. Kidd's explanation --

8 THE COURT: Well, I guess that would depend on the
9 size of the files; right?

10 MR. KEECH: It's the size of the files, it would take
11 more time for those files to open, correct. And so, you know,
12 once, again, I just want to, sort of, make that point that the
13 theory that these documents were somehow photographed doesn't
14 really fit what was actually found in the drive.

15 THE COURT: Okay.

16 MR. KEECH: Ms. Kidd learned of GBB's negotiations
17 with Britney Brands after accepting her offer. April 8th she
18 signs her GBB offer letter. April 29th is when they enter into
19 that deal. April 30th, Mr. Brondi inform Ms. Kidd of the deal
20 and she accesses Revlon information to perform her job duties.
21 Uploading confidential information to Revlon servers is not
22 trade secret misappropriation.

23 Now, Ms. Fass, I've already addressed. I'm not going
24 to address her again unless the Court has additional questions.

25 THE COURT: No.

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1 MR. KEECH: I would like to briefly mention the
2 balance of hardships and the public interest. Balance of
3 hardships do not favor injunction. The reason is that Revlon's
4 damages are past and they're quantifiable. They know what
5 money they were making from the licensing deal that was
6 allegedly secreted away as a result of misconduct. They can
7 quantify that. In theory, yes, trade secret misappropriate can
8 sometimes be nonquantifiable, but we know the deal that's at
9 issue here.

10 Revlon's injunction will cause, however, irreparable
11 harm to GBB, as well as nonparty Givaudan and Britney Brands.
12 The reason it will cause such hardship to them is because the
13 more that we delay in the stability testing of Givaudan's
14 materials, the more we delay in that work, the greater the
15 likelihood is that Britney fragrances will not be available on
16 the market 1/1/25, pursuant to the deal that Britney Brands has
17 made with GBB. That's extraordinary hardship for my client.

18 We also want to point to out that the public interest,
19 for similar reasons, does not favor an injunction. There is a
20 public interest in free and fair competition. You have to look
21 at not the words of the injunction alone but the effect of the
22 injunction. There are mandatory aspects of this injunction
23 that would effectively mean that Britney Brands can do business
24 with Revlon but be delayed or prevented from doing business
25 with GBB. Any further delay would have the potential and the

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1 likelihood of removing Britney fragrances, used by many people
2 around the world, from the market.

3 THE COURT: I think in your papers somewhere you've
4 indicated what you offered to do prior to the lawsuit. Isn't
5 what they're asking for essentially what you offered to do?

6 MS. SCHMELZ: Before the lawsuit or before the motion,
7 your Honor? Do you mean during the meet-and-confer process?

8 THE COURT: Yes.

9 MS. SCHMELZ: Let me make that point.

10 THE COURT: Sure.

11 MS. SCHMELZ: They have asked for us to return all the
12 confidential materials. We have, as we indicated sequestered.
13 We have the four laptops, and we have the hard drive. And we
14 agree there are privacy concerns that relate to the fact that
15 the servers for GBB are in Europe. There are serious laws and
16 privacy concerns there. There are privacy concerns with regard
17 to the drive because it includes Ms. Fass's private
18 information. So what we have talked about is coming up with a
19 protocol, getting a third party, a forensic expert who will --
20 we don't believe they are entitled to the computers, because
21 there's been no showing there's anything on the GBB drives. We
22 understood with regard to the drive and what we had offered was
23 to say, we will go, and we will get a forensic accountant, a
24 person to come in, review that. And once you identify for us
25 what you consider to constitute your personal trade secret

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1 information, we will go to the drive and search for that. Even
2 after the motion was filed, your Honor, I've had conversations
3 with lead counsel for Revlon, and we made progress where he has
4 identified for me what they now consider, very specifically,
5 certain supplier information and pricing, certain distribution
6 agreements that include pricing, and the formulas, and those
7 are the three categories that have been identified. And we are
8 prepared to go through those categories looking for that
9 pricing information. Because, again, distributors, everybody
10 knows where you can buy it. Supplier Givaudan is public
11 knowledge. The formulas, we don't have them. But we're
12 willing to go to the drive, review those categories of
13 information, see if we find it. And we told them there's no
14 need for injunction. We would agree if we find it on there,
15 we'll either destroyed it or return it to you. And that, we
16 continue to be prepared to do.

17 They also asked us, your Honor, for the injunction,
18 stopping us from using that information. Well, we already
19 attested to the fact that we don't have it, and we're not using
20 it. We don't have any interest in their marketing plans. We
21 don't need to know what's in the juice, if you will, the
22 formulas. We just want to be able to do testing. So that idea
23 of we don't want it; we haven't used it; we've never seen it.
24 We will return it to them. So there is nothing to enjoin. We
25 are not using it. And there are attestations to that in the

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1 record.

2 They then want to bar GBB from taking these four
3 employees and doing any work in the marketplace. Two of them
4 who already said they don't have anything, Mulvihill and Ashley
5 Fass, have nothing to do with the Britney Brands. It's only
6 Ms. Kidd and Mr. Romeo, and both of those individuals have
7 already said they are not using any information from Revlon,
8 trade secret or otherwise, for those purposes.

9 THE COURT: Yeah, but they're also more generally
10 prevented from reaching out to other business partners of
11 Revlon; correct?

12 MS. SCHMELZ: There's no non-solicitation agreement in
13 that regard.

14 THE COURT: I thought there was.

15 MS. SCHMELZ: There's a non-solicitation for
16 employees.

17 THE COURT: I see.

18 MS. SCHMELZ: There's an employee non-solicitation
19 that they adhere to, but there's nothing that stops her from
20 being able to operate in the marketplace. And there is no
21 evidence that they used any information of Revlon's in order to
22 compete in the marketplace. So what they are trying to do here
23 is try their case and at the end of the day and in the
24 meanwhile stop GBB from being able to do their business.

25 THE COURT: And you, I believe, also agreed to wall

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1 off these four employees.

2 MS. SCHMELZ: Two of them are irrelevant because they
3 don't do anything with Britney Brands. With regard to the
4 other two, they are not doing anything that they are not
5 otherwise entitled to do. In other words, they're not seeking
6 to manufacture, market, trade, or do anything. The only thing
7 those individuals are trying to do is get the company, GBB,
8 ready so that when January 1, 2025, comes they could continue
9 to go ahead and sell these products.

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1 MS. SCHMELZ: It's well known within the industry you
2 don't just flip the lever on the day -- this transfers at the
3 end of this year. In order to get ready to market, we must be
4 able to do certain things to get ready, as you can imagine. We
5 need to start ordering bottles, labels and the like. XXXXXXXX
6 XX
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11 XXXXXXXX We just want to take it to a third party, they'll
12 ship it to somebody who will do stability testing to make sure
13 that the juice is compatible with the bottles that GBB is now
14 going to be using to market this.

15 THE COURT: Again, we don't have to spend a whole lot
16 of time on this because there is no counterclaim, at least not
17 yet.

18 MS. SCHMELZ: We haven't had the opportunity.

19 THE COURT: To the extent that anyone is prevented
20 from you doing that, it's Givaudan. They are the ones, to
21 Mr. Keech's theory, are being overly cautious.

22 MS. SCHMELZ: Your Honor, we do believe we have
23 serious counterclaims for interference. As you might imagine,
24 the lawsuit was just recently filed. And then on the eve of
25 that, we have been busy over the last week or so getting ready

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1 for this hearing. We are in the process of preparing, and
2 certainly do intend to file counterclaims for interference and
3 disrupting our relationship and the ability of these four
4 individuals to do the job they are entitled to do and to
5 compete in the marketplace. There's no showing here and
6 there's no basis upon which to stop them. They could have
7 provided for a non-compete. They could have paid for that at
8 Revlon, they didn't. So these individuals, who walked out the
9 door, are entitled to go to Givaudan with their knowhow,
10 granted, they are not allowed to use trade secrets to do their
11 work, but there is absolutely no evidence that these
12 individuals are doing so. And, in fact, that the evidence is
13 to the contrary if you review each of the declarants.

14 THE COURT: Okay.

15 MR. KEECH: So I'm going to end my presentation there.
16 I thought that my colleague did a good job emphasizing some of
17 these points. I don't know what the Court wants to do in the
18 expedited discovery motion, but it will not be me addressing it
19 for the defendants.

20 THE COURT: Let me ask Ms. Echtman just a couple of
21 questions. Why didn't you take their offer?

22 MS. ECHTMAN: Your Honor, the offer was insufficient.
23 So we said give us back our documents, give us the hard drive,
24 give Revlon back everything that was taken. And give us
25 assurances that you won't use our trade secrets, XXXXXXXXXXXXXXXX

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XXXXXX We did not get an agreement on those requests, as
Ms. Schmelz has just said, they refuse to give us the hard
drive. I actually sent an email to Mr. Cotter or my colleague
did. And said, give us an inventory of what's on the hard
drive. We did not get that.

There is also, just frankly, a lack of trust with the
other side and between counsel. I was party to a conference
call with attorneys from K&L Gates on September 10th where we
talked through what we would need in order to stand down and
not move for a preliminary injunction. Mr. Cotter represented
that the employees effectively already were walled off. That's
reflected in our notes of the conversation.

We learned later, in the opposition to the preliminary
injunction that that was not accurate. Because I followed up
and said, you said the employees are effectively already walled
off, what does that mean? And I was told that meant was they
were not working on Britney Brands. And when we received the
opposition to the preliminary injunction we learned that was
not accurate. I don't know why it is not accurate, but the
papers that we received show that both Ms. Kidd and Mr. Romeo
are actively working on Britney Brands.

So I have lot more to say in reply. I would also very
much like to show you the relevant portion of the Givaudan

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1 agreement, XX
2 XX
3 XX
4 XX
5 XX
6 XX

7 THE COURT: Is that the same document Mr. Keech was
8 reading from?

9 MS. ECHTMAN: It's the same document that he read
10 from, but he didn't read from this particular page, and he
11 didn't read from this particular document, which I will bring
12 up on the screen. XX
13 XX
14 XX
15 XX

16 THE COURT: You need to slow down when you read.

17 MS. ECHTMAN: Let me see if I could get this on.

18 XX
19 XX
20 XX
21 XX
22 XX
23 XX
24 XX
25 XX

[illegible]

MS. ECHTMAN: There is no limitation on the time period in which these product formulas are proprietary to Revlon.

Now, defense counsel said that the Revlon agreement with Britney Brands is not confidential and that it was filed publicly in a lawsuit involving a licensing company. They didn't mention that in their opposition papers. We found that lawsuit, and that's not the current agreement. It's a prior agreement; it's got different terms. It's not the agreement that's currently in effect. It's not the agreement that we filed under seal here. It's an old agreement between Britney Brands, a company known as Brand Sense and Elizabeth Arden. The operative agreement, which we submitted to the Court, which dates from January 2010, has not been publicly disclosed. XX
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But this is all a red herring. This not what this case is about. They are trying to make this case about the theft of the Britney Spears relationship. While we believe there was wrongdoing there and we believe that there Ms. Kidd gave information to GBB during the interview process that allowed them to swoop in and steal our agreement, that is done. They have a relationship now. We are not trying to take that back. What we are moving on here is the misappropriation of trade secrets that happened likely after GBB inked that agreement. Just because they inked an agreement on April 29, 2024, doesn't mean that Revlon's former employers, as they were walking out the door, didn't take trade secrets to use at their new employment where they knew they were going to be working

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1 with Britney Brands and where they likely wanted to bring some
2 of their other businesses with them.

3 THE COURT: Okay. We do have to, at some point, end.
4 So let me ask you to turn, if you would, to the motion for
5 expedited discovery.

6 MS. ECHTMAN: On the motion for expedited discovery, I
7 think that the presentation you heard from defense counsel
8 shows exactly why we need that expedited discovery. They keep
9 saying you don't know what's on the hard drive. You can't say
10 that there are trade secrets on the hard drive. You don't know
11 what Ms. Kidd did with the documents that she was opening
12 between the hours of 9:45 and 12:15 a.m. Well, we don't know
13 it because it's in their possession. They are saying they are
14 not using Revlon's trade secrets, in order to commercialize
15 what they want to commercialize for Britney Brands. Well, we
16 haven't seen whether their marketing plans copy ours. All of
17 this information is in their knowledge, and they are trying to
18 say -- I think we've shown you enough for preliminary
19 injunction, but we don't know everything that they took. What
20 Mr. Racich was able to find is the tip of the iceberg. There
21 is only so much he can see from a forensic examination of a
22 laptop that Ms. Kidd admittedly wiped clean. There is only so
23 much we can see about what folders Ms. Fass took from the
24 system. We don't know whether things were uploaded on to the
25 GBB system. We don't know whether copies were made on a GBB

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1 lap it top. Ms. Schmelz seems to be concerned that Revlon's
2 documents may be on a server in Europe. Well, that's a serious
3 concern.

4 (Continued on next page)

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1 MS. ECHTMAN: This shows exactly why we know that
2 Revlon's confidential information was taken. We need to get it
3 back, and we need to have expedited discovery so that the Court
4 can give us full and complete relief to prevent the misuse of
5 our trade secrets in their business.

6 And, in addition, in terms of Ms. Schmelz's concerns
7 that they need to get certain oils or things for stability
8 testing, if they only want to use publicly available
9 information, then they can get some Britney Fragrances off the
10 shelf and they can test anything they want. They can try to
11 reverse-engineer anything they want. But they can't have
12 Revlon's proprietary and confidential information. Thank you.

13 THE COURT: Ms. Love.

14 MS. LOVE: Thank you, your Honor.

15 We are here because plaintiffs are asking the Court to
16 deviate from the normal rules of discovery, and they would have
17 you believe that all they want is simply the return of their
18 documents. And if that is in fact all that the plaintiffs were
19 asking for today, we probably wouldn't need the Court's
20 intervention because as my colleague, Ms. Schmelz, has said, we
21 are having ongoing discussions to address some of those
22 concerns.

23 However, plaintiffs in this motion are asking for a
24 lot more than just a look at the drive or the return of their
25 documents. And not only do they want a lot more than that, but

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1 they want it really fast. They want it before the parties'
2 Rule 26 conference, and they want it before the defendants have
3 even been able to answer the complaint. They are talking about
4 expedited discovery as though they are entitled to it as of
5 right, but they are not.

6 There are standards that courts in this circuit have
7 applied, and, under both of them, plaintiffs have to make a
8 showing, based on reliable evidence, that there is some good
9 cause that justifies the need for expedited discovery. They
10 have to show that there is some need for that discovery based
11 on some kind of imminent harm.

12 Not only do they have to do that, but there has to be
13 a balancing of the relative risks between the parties.
14 Expedited discovery should be rejected if the benefits of
15 expedited discovery outweigh -- if the burdens outweigh its
16 benefits. Here they do.

17 Plaintiffs characterize their request as not a big
18 ask, but look at what they are requesting for. Seventy-two
19 document requests, because there are eight different requests,
20 each given to five different GBB entities and four individuals.
21 Plaintiffs complain that defendants are exaggerating about this
22 number, but this is just what it all adds up to, and indeed we
23 are going to have to respond to 72 document requests if the
24 Court orders these discovery requests -- if the Court grants
25 this motion.

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1 THE COURT: As a practical matter, don't you only have
2 to go to the four employees and one server?

3 MS. LOVE: Going to one server, your Honor, is
4 actually a very big ask because the servers are located in
5 Switzerland. So in order to search those servers, we would
6 have to -- we cannot do a bulk data transfer to the United
7 States. We would have to go to Europe. We would have to do a
8 search there. We would have to segregate relevant information
9 from nonrelevant information, and then we would have to, per
10 the terms of the parties' stipulated protective order, redact
11 any personal information of European residents from relevant
12 documents before we could answer these requests, even before we
13 could review them here in the United States, so this is a big
14 ask.

15 Plaintiffs could have asked for something much more
16 narrowly tailored. They have tried to do that in their reply,
17 and they are now asking the Court to tailor this discovery for
18 them. That's what they actually asked for. On this motion,
19 what's before the Court, the requests are much more broad.
20 They are asking for all communications between GBB and the
21 individual defendants, all communications between GBB and
22 Britney Brands, all communications among GBB about the
23 transitioning of Britney Brands and between GBB and other
24 prospective brand partners. So this is really merits
25 discovery. It is very, very broad, and they are not entitled

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1 to it yet because they have not made a showing.

2 The forensic examination that we have been talking
3 about is not -- we are not just talking about one external hard
4 drive that's here in the United States. What they have
5 requested is far more than that. They want every single one of
6 the professional devices of all four of the individual
7 defendants, including cell phones, laptops, desktops, tablets,
8 external hard drives. They have also asked for the same kind
9 of forensic examination for those devices from the individual's
10 personal devices. So in my family we have more devices than we
11 have people: Six computers, two tablets, four cell phones.

12 This request, as drafted, doesn't even specify the
13 logical limitation that forensic exams should be of devices
14 that the individual defendants used for work purposes. Does
15 this include a desktop that they share at home with their
16 family? Unclear. All of this the plaintiffs want within 10
17 days, and that's also a very big ask.

18 Beyond that, plaintiffs want three 30(b)(6)
19 depositions of GBB LLC, GBB International LLC, and GBB Americas
20 LLC. And the topics that they want to ask these entities about
21 are these vague discovery requests, most of which are
22 communications between various entities that are not limited by
23 any subject matter. So I don't know how a 30(b)(6) deponent
24 could be prepared except by reading all of these documents.

25 In addition, plaintiffs want four depositions of the

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1 individual defendants despite vastly disparate facts that would
2 justify those depositions as pertains to Ms. Fass, Mr. Romeo,
3 Mr. Mulvihill, and Ms. Kidd.

4 I want to return to what else plaintiffs are asking
5 for because plaintiffs are asking for this extraordinary
6 expedited access, regardless of showing any nexus between what
7 they are asking for and the imminent harm that they are
8 alleging here.

9 I think in the reply papers they have more or less
10 conceded the fact that they have no basis for injunctive relief
11 surrounding the correspondence and communications that have
12 occurred with respect to the Britney Brands deal. That's over.
13 So they don't need communications between GBB and Britney
14 Brands. This is just one example of the overbreadth of these
15 requests.

16 This is not tailored to preserve the status quo.
17 GBB's privileged information is at risk, as well as its own
18 trade secrets. The plaintiffs are asking for information so
19 broad that it will put at risk GBB's own information, the
20 individual defendants' personal information, and this is all,
21 again, regardless of any relationship to undefined Revlon
22 confidential information. Many of the document requests do not
23 reference Revlon confidential information at all.

24 One point I want to make about this lack of nexus.
25 Your Honor asked some questions about Ms. Fass and her hard

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1 drive and why we shouldn't be concerned about that. I'm not
2 saying that there is no concern, but we must note that there is
3 really a lack of connection between Ms. Fass opening files from
4 her hard drive and any of the work that she is doing at GBB.

5 Plaintiffs have raised concerns about Juicy Couture,
6 but Ms. Fass doesn't work on Juicy Couture.

7 THE COURT: Was she the one that had some
8 communication with GBB thanking them for providing a position
9 that had a market development aspect to it? Doesn't that
10 suggest that she would have responsibilities for bringing in
11 business like, for example, Juicy Couture?

12 MS. LOVE: Ms. Fass' work focuses on the Tommy
13 Hilfiger brand. This is not a Revlon licensor. And there is
14 no information in the record that she is doing any kind of
15 brand development with Juicy Couture. She is not doing
16 prospective business with them.

17 Furthermore, GBB and Britney Brands contract
18 negotiations are complete, so nothing related to that really
19 provides any basis for expedited discovery. And, again, in the
20 record there is really no evidence presented by Revlon of any
21 prospective injury. Everything that they have put in the
22 record is speculative as to what the individual defendants
23 might remember about their time at Revlon and might be using at
24 their jobs at GBB. But there is no evidence in the record that
25 anything untoward is actually occurring, and in fact there are

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1 a number of protective measures already in place that make
2 expedited discovery unnecessary.

3 Ms. Kidd and Mr. Romeo contracted not to use Revlon
4 confidential information, and it's rather perverse that in a
5 lawsuit where plaintiffs are attempting to enforce those
6 contractual provisions, they are also arguing that the Court
7 should presume they are futile and that there will be
8 inevitable dissemination of confidential information.

9 Further, Revlon's suppliers, as we have heard today,
10 have contracted confidentiality obligations, and it has been a
11 topic of discussion today, and we have seen that those in fact
12 have been effective in protecting Revlon's interests.

13 Furthermore, defendants are aware, of course, of their
14 duty to preserve evidence, and GBB's computers and Ms. Fass'
15 hard drive have all been sequestered by counsel. We can
16 preserve the status quo without having to do expedited
17 discovery.

18 Again, my last point is the timeline that Mr. Keech
19 already took the Court through with respect to how long it took
20 Revlon to seek this relief. It's true that the lawsuit was
21 only filed three or so weeks ago, but, actually, there has been
22 quite a long history of information coming slowly to Revlon
23 about Ms. Kidd leaving, about the loss of the Britney Brands
24 deal, about the rest of the team's departure from Revlon.

25 And the papers don't say exactly when the plaintiffs

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1 started to become suspicious, but we do know, of course, that
2 it was at least two months ago when they sent the laptops for
3 forensic examination. This just belies any exigency to the
4 need for expedited discovery.

5 THE COURT: Two months ago is when they sent the
6 laptops or the computers for forensic examination. Could they
7 have responsibly brought a motion for preliminary injunction in
8 the absence -- even the evidence that they have now, you say,
9 is not enough. Could they have responsibly brought this motion
10 before receiving the forensic examination?

11 MS. LOVE: They could have reached out to GBB. These
12 are competitors. They work together. In fact, they were in
13 communication about this transition and there was no mention.
14 GBB learned about these allegations on August 26, when this
15 lawsuit was filed.

16 THE COURT: I'm sorry. We are going to have to come
17 back to Ms. Echtman on that point, but you can finish up,
18 Ms. Love.

19 MS. LOVE: Your Honor, at the end of the day, there
20 simply has to be a balancing of the relative risks to the
21 parties, and what we have here is hefty burdens to GBB. These
22 discovery requests are voluminous. They are going to require a
23 lot of preparation in a very short amount of time. They are
24 overbroad and invasive because they put at risk GBB's own trade
25 secrets, irrelevant personal information belonging not only to

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1 the individual defendants, but also to potentially some
2 European data subjects, and, of course, they risk the violation
3 of privacy laws with a swift response to document requests that
4 would prevent the parties from being able to even comply with
5 the stipulated protective order and redact personal information
6 that comes from Europe.

7 MS. SCHMELZ: Your Honor, may I just make one closing
8 point, if I may?

9 THE COURT: Sure.

10 MS. SCHMELZ: Thank you.

11 I think it's very important because these motions have
12 been brought in tandem. We understand the exigency with regard
13 to the concern that they have about purported trade secrets
14 which they have not yet identified, but this goes far beyond
15 that, beyond the scope of even what they are asking for.

16 What may make some sense, and I want to offer, because
17 we are continuing to have these conversations, is that we
18 continue to believe that there is no need for the Court to
19 order the injunction. We understand the concern vis-a-vis the
20 drive, and we are prepared to work -- now that they have
21 further identified what the trade secrets are, these three
22 categories have been identified, we are prepared to go to and
23 get a third-party forensic expert who will go in and do the
24 examination to determine whether that data is on that drive.

25 There is no reason and basis for going into the

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1 computers. That's what we should be dealing with and that's
2 what they are entitled to. The rest of the scope of relief is
3 beyond that.

4 I want to close out with one other issue, your Honor.

5 XX
6 XX
7 XX
8 XX
9 XX
10 XX
11 XX
12 XX
13 XX
14 XX
15 XXXXXXXXXXXXXXX

16 THE COURT: You are quoting from your papers, but what
17 are you citing to?

18 MS. SCHMELZ: Citing to the Revlon Britney Brands
19 agreement XX
20 XX
21 XX
22 XX
23 XX

24 XX
25 XX

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XX
XXXXXXXXXXXXXXXXXXXX

MS. LOVE: Your Honor, I don't have a lot more than that.

What I'm trying to say is that in these circumstances, in light of what the parties have already been discussing, in light of the protective measures that have been taken already, and in light of the considerable risks and burdens that this particular discovery would impose on GBB, those burdens are not outweighed by the benefits of expedited discovery to the plaintiffs.

THE COURT: Thank you.

Ms. Echtman, can I just ask you to address briefly the exigency issue, why you're bringing this motion for preliminary injunction now. For example, I was surprised when I saw the complaint. In fact I told my clerk, except a PI motion today or tomorrow. Even then it came a little bit later.

What efforts were being undertaken prior to filing this motion?

MS. ECHTMAN: First, I'd like to just explain the timing of the complaint.

In the first instance, Revlon didn't know where these employees were going. It had heard through Britney Brands that Vanessa Kidd was going to GBB. She wouldn't tell them where she was going. The others didn't tell Revlon where they were

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1 going. It took Revlon a while to learn that they had all gone
2 to GBB. From what I understand, some of their LinkedIn pages
3 still say that these folks work at Revlon.

4 And it was while Revlon was told at the end of the May
5 by Britney Brands that they had signed with someone else, they
6 didn't learn what entity they had signed with. Vanessa Kidd
7 didn't tell them what entity they had signed with. I don't
8 think it was until July that they learned that -- or late June
9 or July that they learned that GBB, where these employees had
10 gone, had the Britney Brands licensing agreement come 2025.

11 So at that point Steptoe was retained, and we
12 commissioned Mr. Racich to do a forensic investigation of the
13 laptops. We got the results around August 8 or so. And, no,
14 we didn't reach out to GBB because we had serious concerns
15 about spoliation.

16 So we filed on August 26, and Ms. Schmelz promptly
17 reached out to my colleague, Michael Dockterman, and they
18 started talking about ways that this could be resolved in the
19 absence of a preliminary injunction. And we had repeated
20 conversations about Revlon wanting its information back and
21 additional protections. Those discussions went nowhere.

22 Another thing we talked about was entering into a
23 protective order so that the parties could change their Britney
24 Brands agreements and compare them to see whether Revlon's
25 agreement had been copied. And the agreement was, we are going

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1 to enter into a protective order, which we also felt we needed
2 before we filed anything with the Court, to make sure that
3 things could be filed on an attorneys'-eyes-only basis. And we
4 entered into the agreement and the -- the protective order, we
5 filed it with the Court, and we immediately moved for a
6 preliminary injunction.

7 Under the circumstances, I think we acted promptly,
8 and we did it in a way where we could be assured that there
9 would be people with an ethical duty not to destroy things.
10 Even so, while we are being told that everything is being
11 secured, it took until September 19 for counsel to retain --
12 obtain possession of the Fass hard drive. That remained in Ms.
13 Fass' hands.

14 We don't want their children's PCs. We want the PCs
15 that they worked on, and I also request that the Court please
16 look at the specific discovery requests that we have because
17 they are much more narrowly drawn than they have been
18 represented to be.

19 Number one is, all Revlon documents taken or retained
20 by the Revlon employees. That we still haven't gotten. We
21 want communications in very specific time periods. We want the
22 former employees' communications with GBB from January 1, 2024
23 through May 31, 2024, which is before they went to work at the
24 company, to find out what, if anything, they told GBB during
25 the recruiting process, to find out whether they gave over

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1 confidential information in that time period.

2 I also have to correct a misstatement by Ms. Schmelz.
3 She said the only nonsolicitation obligation in the employment
4 agreements is the obligation not to solicit other employees to
5 leave the company. That's not accurate. You have those
6 agreements before you. There is a requirement after you leave
7 the company not to solicit Revlon's business partners, to cease
8 doing business with Revlon. That applies for one year. Of
9 course, under both the common law and the trade secret law,
10 they can't use Revlon's trade secrets to compete with Revlon.

11 Thank you, your Honor.

12 THE COURT: Give me 10 minutes. Don't go far.

13 (Recess)

14 THE COURT: I will not issue a preliminary injunction,
15 but I will allow some discovery to be taken on an expedited
16 basis.

17 The test standard for a preliminary injunction in the
18 Second Circuit is well established. Both parties have cited it
19 to me. There is no dispute about what the standard is.

20 And on the facts of this case, while it is a close
21 call, I will not be issuing the injunction.

22 I find that the irreparable harm and likelihood of
23 success factors weigh against injunctive relief.

24 With respect to irreparable harm, plaintiffs argue
25 that trade secret dissemination gives rise to a presumption of

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1 irreparable harm under Second Circuit case law, but the Second
2 Circuit has made clear that it is not correct to say that a
3 presumption of irreparable harm automatically arises upon the
4 determination that a trade secret has been misappropriated,
5 citing to *Faiveley Transportation v. Wabtec Corp.*, recorded at
6 559 F.3d 110.

7 The Second Circuit elaborated: A rebuttable
8 presumption of irreparable harm might be warranted in cases
9 where there is a danger that, unless enjoined, a
10 misappropriator of trade secrets will disseminate those secrets
11 to a wider audience or otherwise irreparably impair the value
12 of those secrets. Where a misappropriator seeks only to use
13 those secrets without further dissemination or irreparable
14 impairment of value in pursuit of profit, no such presumption
15 is warranted because an award of damages will often provide a
16 complete remedy for such an injury.

17 Indeed, once a trade secret is misappropriated, the
18 misappropriator will often have the same incentive as the
19 originator to maintain the confidentiality of the secret in
20 order to profit from the proprietary knowledge.

21 In this case plaintiffs don't appear to be arguing
22 that defendants are disseminating their trade secrets to a
23 broader audience or other competitors. Instead, they argue
24 that the individual defendants have disseminated the trade
25 secrets to GBB. Even accepting the truth of that assertion, it

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1 doesn't seem to be the kind of widespread dissemination that
2 warrants injunctive relief. If the trade secrets are contained
3 within GBB and GBB is using them for profit, then, presumably,
4 GBB would be incentivized not to disseminate them any further.

5 To the extent that plaintiffs argue that GBB is
6 improperly contacting Revlon's suppliers and demanding Revlon's
7 fragrance formulas, it is unclear how that constitutes a
8 showing of irreparable harm, and, on the facts that have been
9 presented here this afternoon, there is a real question as to
10 who the actual owner of that formula is.

11 With respect to likelihood of success on the merits,
12 the requirement for showing a misappropriation of a trade
13 secret are similar under state and federal law. Under New York
14 law, a party must demonstrate (1) that it possessed a trade
15 secret; (2) that the defendants used that trade secret in
16 breach of an agreement, confidential relationship, or duty, or
17 as a result of discovery by improper means.

18 Similarly, the Defend Trade Secrets Act, under the
19 act, a party must show an unconsented disclosure or use of a
20 trade secret by one who used improper means to acquire the
21 secret or, at the time of disclosure, knew or had reason to
22 know that the trade secret was acquired through improper means
23 under circumstances giving rise to a duty to maintain the
24 secrecy of the trade secret or derived from or through a person
25 who owed such a duty.

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1 I don't agree with the defendants' argument, as I
2 indicated, that plaintiffs have failed to identify trade
3 secrets with sufficient specificity. Plaintiffs allege, for
4 example, that the information about the Britney Fragrances,
5 including the supply and distribution chains, manufacturing,
6 marketing, and advertising plans, and the costs and revenues
7 associated with the Britney Fragrances was treated as a trade
8 secret. And I find that the company further sufficiently
9 established that it was treated as a trade secret within the
10 company and that the employees, the four employees, were
11 trained in and assented to company regulations concerning the
12 maintenance of such trade secrets.

13 However, at the same time, I don't believe that
14 plaintiffs have shown a likelihood of success as to the
15 argument that the trade secrets were actually misappropriated.
16 Plaintiffs' theory seems to be that the individual defendants
17 took trade secrets with them when they left Revlon and then
18 used those trade secrets to help GBB secure the Britney Brands
19 partnership, but the affidavits indicate that the individual
20 defendants weren't involved with the GBB Britney Brands deal.
21 And, apparently, I think that the discussion this afternoon
22 suggested that plaintiffs were not arguing or any longer
23 arguing that the four employees helped to bring about the deal,
24 with the possible exception of Ms. Kidd.

25 With respect to the balance of equities and public

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1 interest, I think that both of those issues are neutral as
2 between the parties.

3 With respect to the motion to expedite discovery, as I
4 indicated, I will allow expedited discovery to take place. The
5 discovery should be limited generally to what information,
6 including documents, the individual defendants took with them.

7 I think that the deposition of the individual
8 defendants is appropriate on an expedited basis. To the extent
9 that the parties are unable to agree on that limited scope of
10 discovery, you are welcome to come back. But, again,
11 plaintiffs should be able to determine as quickly as possible
12 what exactly the four individual defendants took with them, saw
13 after they completed their employment with Revlon, and we will
14 take it from there.

15 MS. SCHMELZ: One clarification, your Honor.

16 Just a point of clarification. With regard to the
17 expedited discovery, it's focused on what did the individual
18 defendants take with them.

19 THE COURT: Yes.

20 MS. SCHMELZ: And whether any of those documents, if
21 we have them, to return them.

22 THE COURT: Yes.

23 MS. SCHMELZ: Furthermore, that the depositions of the
24 four individuals will be limited to what information they took
25 with them or saw since they left Revlon, is that correct?

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1 THE COURT: And to the extent that they used any of
2 that information in connection with their duties at GBB.

3 MS. SCHMELZ: Very good. I just wanted to clarify,
4 that's the limited scope of the depositions.

5 THE COURT: Correct.

6 MS. SCHMELZ: Thank you, your Honor.

7 THE COURT: Ms. Echtman.

8 MS. ECHTMAN: Your Honor, may we also have information
9 on what they shared with GBB before they left. This particular
10 motion was not focused on the tortious interference with the
11 Britney Brands agreement. That is part of the complaint in
12 this action. We know, based on Mr. Racich's investigation,
13 that things were taken and retained after the employees left,
14 but we also believe that information was provided to GBB before
15 they left.

16 THE COURT: Yes, you can ask about that, to the extent
17 that they provided any trade secret information to GBB before
18 they were made the offer.

19 MS. ECHTMAN: Thank you.

20 MS. SCHMELZ: Thank you, your Honor, for the
21 clarification.

22 THE COURT: With that, I think, we are adjourned.

23 Ms. Schmelz.

24 MS. SCHMELZ: Thank you very much, your Honor. We
25 appreciate the time and the effort, and, amazingly, how much

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1 you knew about the record in such a short period of time was
2 very impressive. Thank you for that.

3 THE COURT: Have a good evening, all.

4 (Adjourned)